Supreme Court, U.S.
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Docket No. _____

In The
Supreme Court of the United States

October Term 2000

Melissa LeBlanc,
Petitioner,
v.

Max Miguez and Allstate Insurance Company
Respondents,

On Petition For Writ Of Certiorari
To The Supreme Court of the State of Louisiana, State of Louisiana Court of Appeal, Third Circuit, and the State of Louisiana, 15th Judicial District Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Supreme Court of the State of Louisiana erred in not declaring provisions of Louisiana law which give preferences to males over females in the maintenance of civil actions on behalf of minors contrary to constitutional provisions prohibiting discrimination based on sex in clear contravention of this Court's ruling in ***Reed v. Reed***, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971)

2. Whether the Louisiana Court of Appeal erred in dismissing the appeal of ***MELISSA LEBLANC*** as moot because the trial court granted permission to **MELISSA LEBLANC,** a female, to file a suit on behalf of her minor child, which permission is not necessary for males.

3. Whether the Court of Appeal erred in not applying the Exception to Mootness doctrine which would assure that the government would cease the unconstitutional conduct of discriminating against females.

PARTIES TO PROCEEDING IN SUPREME COURT OF THE STATE OF LOUISIANA

1. Melissa LeBlanc
2. Max Miguez
3. Allstate Insurance Company
4. Allstate Indemnity Company

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

PARTIES TO PROCEEDING IN
SUPREME COURT OF THE STATE OF LOUISIANA
..... ii

TABLE OF AUTHORITIES v

OPINIONS BELOW vi

JURISDICTIONAL STATEMENT vii

CONSTITUTIONAL PROVISIONS INVOLVED viii

STATEMENT OF THE CASE 1

REASONS RELIED ON FOR ALLOWANCE
OF THE WRIT 4
INTRODUCTION 4
ARGUMENT 5

APPENDIX "A" (Petition for Damages filed by Melissa LeBlanc)
..... 27

APPENDIX "B" (Dilatory Exception of Lack of Procedural
Capacity filed by defendants, Allstate Insurance Company
and Max A. Miguez) 33

APPENDIX "C"(Petition for Declaratory Judgment filed by
Melissa LeBlanc) 37

APPENDIX "D" (Judgment of Trial Court) 47

APPENDIX "E" (Motion and Order for Devolutive Appeal filed by Melissa LeBlanc) 50

APPENDIX "F" (Order of Court of Appeal, Third Circuit, State of Louisiana to show cause why appeal should not be dismissed) 52

APPENDIX "G" (Judgment and opinion of Court of Appeal, Third Circuit, State of Louisiana) 53

APPENDIX "H" (Notice of Intention to apply for Writ of Certiorari filed by Melissa LeBlanc) 58

APPENDIX "I" (Decision of The Supreme Court of the State of Louisiana) 60

APPENDIX "J" (Relevant Louisiana laws) 61

TABLE OF AUTHORITIES

1. U.S. Constitution - Amendment XIV
2. U.S. Const. Amendment XIX
3. La. Const. Art. 1 Sec. 3
4. *Reed v. Reed*, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971)
5. *Fay v. New York*, 332 U.S. 261, 289-290 (1947)
6. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 141 (1873)
7. *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718 (782)
8. *United States v. Virginia*, 518 U.S. 515 (1996)
9. *Craig v. Boren*, 429 U.S. 190, 197, 97 S. Ct. 451, 456-457, 50 L. Ed. 2d 397 (1976)
10. *J.E.B. v. Alabama*, 511 U.S. 127 (1994)
11. *Stanton v. Stanton*, 421 U.S. 7 (1975)
12. *Kirchberg v. Feenstra*, 450 U.S. 455, 462-463 (1981).
13. *Cat's Meow, Inc. v. City of New Orleans, through the Department of Finance*, 98-CA-0601 (La. 10/20/98) 720 So.2d 1186
14. Louisiana Code of Civil Procedure Article 683
15. Louisiana Code of Civil Procedure Article 732
16. Louisiana Code of Civil Procedure Article 4501
17. Louisiana Code of Civil Procedure Article 4502
18. Louisiana Civil Code Article 216
19. Louisiana Civil Code Article 221
20. Louisiana Revised Statute 9:195

The text of the relevant Louisiana laws are included in Appendix "J".

OPINIONS BELOW

The Supreme Court of the State of Louisiana did not issue an opinion other than stating that petitioner's application for Supervisory and/or Remedial writs were Denied. (Appendix "I") In a divided opinion, three of the Court's seven justices, Catherine D. Kimball, Bernette J. Johnson and Jeanette Theriot Knoll voted to grant the writ and consider the argument of Melissa LeBlanc.

The Court of Appeal, Third Circuit, State of Louisiana issued an opinion dismissing the appeal of Melissa LeBlanc stating that because the trial court gave permission to Melissa LeBlanc to maintain an action for damages on behalf of her minor child, the issue of the unconstitutionality of the Louisiana statute giving males preferences over females had become moot, that is, Melissa LeBlanc was given the relief that she prayed for in her petition for damages. (Appendix "G")

The 15th Judicial District Court, Parish of Vermilion, State of Louisiana rendered an opinion, maintaining the exception of lack of procedural capacity filed by the defendants, dismissing

the petition for declaratory judgment and granting permission to Melissa LeBlanc to maintain and pursue and action for damages on behalf of her minor child. (Appendix "D").

JURISDICTIONAL STATEMENT

Jurisdiction of this court is invoked pursuant to 28 U.S.C. 1257 to review the decision of the Supreme Court of the State of Louisiana rendered on November 17, 2000 denying petitioner's application for supervisory and/or remedial writs, the decision of the Court of Appeal, Third Circuit, State of Louisiana dismissing the appeal of Melissa LeBlanc rendered on July 12, 2000 and the decision of the 15th Judicial District Court, Parish of Vermilion, State of Louisiana rendered on March 28, 2000.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution Articles

U.S. Constitution - Amendment XIV

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall nay state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Louisiana Constitution Articles

> La. Const. Art. 1 Sec. 3 Right to Individual Dignity.
> No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

STATEMENT OF THE CASE

This is a civil matter. The appellant in this case, ***MELISSA LEBLANC,*** the biological mother of the minor, ***ASHLEY L. LEBLANC***, is married to the minor child's father. Mr. and Mrs. LeBlanc are physically separated but no proceedings for divorce have been filed by either party. Appellant, ***MELISSA LEBLANC***, filed a petition for damages on behalf of her minor child for injuries the minor received as a result of the delictual action of the defendant, ***MAX A. MIGUEZ***. (Appendix "A") The defendants, ***ALLSTATE INSURANCE COMPANY and MAX A MIGUEZ***, filed an exception of lack of procedural capacity, alleging that only the minor's father can petition this court on behalf of the minor child basing their argument on La. C.C.P. Art. 683, which gives fathers the right to pursue actions on behalf of their minor children in preference over mothers. (Appendix "B") In response to the exception, ***MELISSA LEBLANC*** filed a petition for declaratory judgment in the trial court seeking to have Article 683 and related articles declared unconstitutional because of the

blatant discrimination contained in these articles against females. (Appendix "C")

The trial court maintained the defendant's exception and dismissed appellant's petition for declaratory judgment. (Appendix "D") The trial court then used the provisions of Article 683 and granted permission to ***MELISSA LEBLANC*** to maintain the delictual action against the defendants.

MELISSA LEBLANC appealed this decision to the Court of Appeal, Third Circuit. (Appendix "E") The Third Circuit, after the issuance of a show cause order to the appellant (Appendix "F") dismissed the appeal as moot because ***MELISSA LEBLANC*** had been given permission to pursue the delictual action on behalf of her minor child. (Appendix "G")

MELISSA LEBLANC applied to The Supreme Court of the State of Louisiana for a writ of certiorari/review seeking to have that court declare the relevant statutes unconstitutional. (Appendix "H") The Supreme Court of the State of Louisiana refused to hear the case and issued a one word ruling "Denied."

(Appendix "I")

MELISSA LEBLANC appeals this decision because her constitutional rights against discrimination based on her sex and her dignity as a female were violated by the application of the relevant Louisiana laws. Further, the issue of the violation of ***MELISSA LEBLANC***'s constitutional rights is not moot. The very act of granting permission is discriminatory. Certainly a male would not have to obtain permission from a court to file a similar lawsuit, making the broad line of demarcation between males and females alive and well in this litigation.

Also, the blatant violation of ***MELISSA LEBLANC***'s rights secured by the United States Constitution and the Constitution of the State of Louisiana were not erased and expunged when the trial court granted permission to Melissa LeBlanc to act in the same manner as a male.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

INTRODUCTION

The appellant herein, ***MELISSA LEBLANC***, is requesting that this Court declare the relevant laws of the State of Louisiana (Appendix "J") unconstitutional because of the blatant sexual discrimination contained in the statutes which exist in contravention of the Constitutions of the United States and the State of Louisiana. The provisions of Louisiana law which grant preference to males over females in the maintenance of civil lawsuits on behalf of minors is clearly unconstitutional. When analyzing the statutes *vis-a-vis* the interpreting jurisprudence from this Court and the Supreme Court of the United States, it is not even a close call. The appellant herein, ***MELISSA LEBLANC*** is also requesting that this Court reverse the decision of the Court of Appeal, Third Circuit, State of Louisiana, which dismissed the appeal of ***MELISSA LEBLANC*** as moot. The issue of the violation of her constitutional rights is still alive. The very act of

the trial court granting permission to ***MELISSA LEBLANC*** to maintain an action on behalf of her minor child violates the Constitution. Further, ***MELISSA LEBLANC*** is before this court today only after she groveled at the feet of the law and was granted permission by a trial court to maintain an action on behalf of her minor child, something a male would not have to do. If this Court does not reverse the appellate court's decision, the government is free to continue to discriminate against females.

ARGUMENT

I. Louisiana laws which unconstitutionally discriminate against females in the maintenance of civil lawsuits on behalf of minors should be declared unconstitutional

Propter defectum sexus, literally, the defect of sex[1] We as a country, as a society, have come a long way from the English common law which considered the female sex a defective sex and somewhat lesser than the male sex. Long passed are the days that women could not serve on juries, (Fay v. New York, 332 U.S. 261,

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[1] United States vs. DeGross, 960 F.2d 1433, 1438 (CA9 1992)(en banc), quoting 2W. Blackstone, Commentaries 362.

289-290 (1947), could not practice law, (Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 141 (1873), and less than one hundred years ago, could not exercise one of the most fundamental rights guaranteed by the rights embodied in the Constitution of these great United States, the right to vote. (U.S. Const. Amendment XIX)

Today this Court is faced with eradicating from our society one of the last vestiges of intentional discrimination against women that is provisions Louisiana law which dates back to the adoption of the Civil Code of 1808 by reference to the Code Napoleon favoring males over females in the representation of minors.

MELISSA LEBLANC is being deprived of the right to petition her government for the redress of her grievances solely because she is a female. Not only does this fly in the face of the progress that this country has made in interpreting the Constitution of the United States but it also deprives Ms. LeBlanc of her dignity as a female which right is guaranteed by the Constitution

of the State of Louisiana.

Before 1971, sexual discrimination by the government was allowed in certain circumstances as long as some reason could be given to justify the sexual discrimination. However, times changed following the decision of the Supreme Court of the United States in the case of Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971). In the Reed case, the Supreme Court of the United States held that an Idaho statute which gave preference to males in the administration of decedent's estates violated the equal protection clause of the Fourteenth Amendment to the Constitution of the United States. After the Reed case, more and more courts found the courage to expunge from our laws unconstitutional discrimination against women.

The Fourteenth Amendment to the Constitution of the United States provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws.

The Louisiana Constitution provides:

La. Const. Art. 1 Section 3, Right to Individual Dignity,

> No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

These principles are founded on the assumption that every person no matter his or her sex, race, religion, national origin, or other affiliations or connections, should be discriminated against. This is presumed that all persons are treated equal under the laws of this country and this state. La. C. C. Art. 216 and 221 (Appendix "J") blatantly discriminate against women without any basis whatsoever for the discrimination. These statutes presume that men are more capable administrators of the estates of minor children than women. This deprives ***MELISSA LEBLANC*** of her dignity guaranteed by Article 1, Section 3, of the Constitution of

the State of Louisiana. The argument that males are more apt than females to administer the estates of their minor children obviously has no merit whatsoever and this argument was struck down by a similar case in the United States Supreme Court, in the Reed case, supra. In Reed, the Court was interpreting a statute from the State of Idaho which gave males the preference over females in administering the estates of decedents. The State of Idaho put forth the argument that the objective of the statute was to "eliminate one area of controversy when two or more persons equally entitled under s15-312, [The Idaho Statute] seek letters of administration and thereby present the probate court with the issue of which one should be named." Chief Justice Warren Burger writing for the Court said:

> Having examined the record and considered the briefs and oral arguments of the parties, we have concluded that the arbitrary preference established in favor of males by s 15-314 of the Idaho Code cannot stand in the face of the Fourteenth Amendment's command that no state deny the equal protection of the laws to any person within its jurisdiction.

The trial court in this case used a similar argument to dispose

of this matter. The trial court declared that the State of Louisiana must have a mechanism in place so that only one person can maintain an action and therefore eliminate duplicity in lawsuits. This statement is not logical when juxtaposed against the constitutional provisions prohibiting sexual discrimination. The answer lies in the fact that Louisiana can create a scheme for parents of minor children to file lawsuits which eliminates duplicity but does so by using ***NON DISCRIMINATORY*** means. One example would be to allow either parent to maintain an action on behalf of a minor child with the parent who files the action being required to give the other parent notice within a certain period of time. Then the "non-filing" parent would have the opportunity to petition the court for a change in the representing parent if that parent desires. Recognizing that this is the job of the legislature and the statements herein are largely academic, it must be understood that a ***NON DISCRIMINATORY*** scheme could be adopted by the State of Louisiana to deal with the representation of minors.

The Court in Reed further analyzed the jurisprudence concerning the equal protection clause of the United States Constitution. The Court recognized that:

> "The Fourteenth Amendment does not deny to states the power to treat different classes of persons in different ways. [Citations omitted]. The equal protection clause of that amendment does, however, deny states the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. [Citations omitted] The question presented by this case, then, is whether a difference in the sex of competing applicants for letters of administration bears a rational relationship to a state objective that is sought to be advanced by the operation of ss15-312 and 15-314.

The Court considering the argument of the state and the holding of the Idaho Supreme Court stated:

> "The crucial question, however, is whether s15-314 advances that objective in a manner consistent with the command of the equal protection clause. We hold that it does not. To give a mandatory preference to members of either sex over members of the other, merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary

> legislative choice forbidden by the equal protection clause of the Fourteenth Amendment; and whatever may be said as to the positive values of avoiding intra-family controversy, the choice in this context may not lawfully be mandated solely on the basis of sex.? (Emphasis added).

Although the Reed case was very specific in the prohibition of discrimination based on sex, since its decision, the Supreme Court of the United States has begun reviewing cases involving discrimination based on three (3) levels of scrutiny, the rational basis test, the strict scrutiny test, and the intermediate level scrutiny test.

The rational basis test, simply examines discriminatory state action and queries whether the discrimination has a rational basis. This is the least obtrusive examination by the courts.

The strict scrutiny standard applies discrimination by the government which involve fundamental constitutional rights. The discrimination based on race has been subjected to strict scrutiny.

In between these two levels of scrutiny is the so-called intermediate level scrutiny which, the courts have held, applies to

state action discriminating based on a person's sex. This Court has held that to withstand an equal protection challenge, discrimination based on sex, the government must show "at least that the classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives." Mississippi Univ. for Women v. Hogan, 458 U.S. 718 (782); United States v. Virginia, 518 U.S. 515 (1996); Craig v. Boren, 429 U.S. 190, 197, 97 S. Ct. 451, 456-457, 50 L. Ed. 2d 397 (1976).

Utilizing that scrutiny, this Court has struck down gender classifications which prohibited the sale of 3.2 percent beer to males under the age of 21 and to females under the age of 18, id., struck down the all male policy of admission at the Virginia Mens Institute, United States v. Virginia, supra, struck down governmental discrimination on the basis of sex in the exercise of peremptory challenge in jury trials, J.E.B. v. Alabama, 511 U.S. 127 (1994), invalidating a Utah requirement that parents support boys until age 21 and girls only until age 18, United States v.

Virginia, supra, citing Stanton v. Stanton, 421 U.S. 7 (1975), and in Louisiana's own backyard, this Court invalidated the old Louisiana "head and master" law which gave the male half of a marriage the unilateral right to deal with community property of the marriage in his sole discretion to the exclusion of the female counterpart, Kirchberg v. Feenstra, 450 U.S. 455, 462-463 (1981).

With this overwhelming mandate from this Court and the interpretation of the Constitution of the United States, the current laws at issue here, cannot stand. On their face, the laws discriminate against females which discrimination cannot stand under the least obtrusive scrutiny, rational basis, much less, the applicable standard of heightened scrutiny.

II. The appellant court erred in dismissing the appeal as moot

Plaintiff-appellant, *MELISSA LEBLANC*'s, constitutional rights were violated, and continue to be violated, because she had to ask permission of the trial court to maintain and pursue an action on behalf of her minor child.

This court cannot ignore the fact that ***MELISSA***

LEBLANC's constitutional rights were violated. She was not able to file a lawsuit on behalf of her own flesh and blood because a Louisiana law, which dates back to the Napoleonic Code, grants only males the authority to file lawsuits on behalf of minor children and not females in certain circumstances. This is a blatant constitutional violation which cannot be disputed. To say the decision is moot because a trial court simply grants the plaintiff-appellant the permission to maintain and pursue the action under the authority of La. C. C. P. Art. 683, which in itself is unconstitutional, flies in the face of progress that this country has made in interpreting the constitution of the United States and deprives Ms. LeBlanc of her dignity as a female which right is guaranteed by the constitutions of the State of Louisiana and the United States of America.

The Fourteenth Amendment to the Constitution of the United States provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

> life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Louisiana Constitution provides:

La. Const. Art. 1 Section 3, Right to Individual Dignity, provides:

> No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime.

Further, this violation of ***MELISSA LEBLANC***'s constitutional rights is ongoing. Today, as ***MELISSA LEBLANC*** appears before this Court, she is being deprived of her constitutional dignity because she is able to file this action ONLY after a trial court, relying on an unconstitutional law, granted her permission to file the lawsuit. Had the biological father of the minor child first filed a lawsuit, we would not be before this Court today. This issue is not moot. ***MELISSA LEBLANC*** cannot file

a lawsuit and appear before this Court on her own right **BECAUSE SHE IS A FEMALE**. That the constitution can be trampled under foot by a trial court simply granting permission is forcing ***MELISSA LEBLANC*** to grovel at the feet of a court and beg to be able to file a lawsuit on behalf of her minor child.

In the United States of America, this discrimination should not occur. This egregious constitutional violation cannot be corrected by simply relying on another unconstitutional provision in our law, to-wit, La. C. C. P. Art. 683, that is, a court simply granting permission to a female to file a lawsuit. For a female to have to wait for the decision of her male counterpart on whether that male will file a lawsuit on behalf of the couple's minor child is simply absurd.

This issue is not dead. The trial court should have struck down the law as unconstitutional and allowed ***MELISSA LEBLANC*** to file the lawsuit in her own right, without having to grant permission. The trial court cannot unconstitutionally discriminate against ***MELISSA LEBLANC*** in this manner. For

these reasons, this issue is alive and well and before this court for decision.

Even if this Court finds that the issue is moot, the exception to mootness rule commands this court to consider the issue of the constitutionally of Louisiana law.

If the issues before this court are moot the issue of whether the above cited provisions of Louisiana law are unconstitutional would never get decided. A trial court could simply grant a female ***"permission"*** to maintain actions on behalf of their minor children and simply gloss over the constitutional problems with the laws. The Supreme Court of the State of Louisiana in Cat's Meow, Inc. Vs. City of New Orleans, through the Department of Finance, 98-CA-0601 (La. 10/20/98) 720 So.2d 1186, held that:

> We are well aware of the various exceptions to the mootness doctrine created to prevent either party from creating a technical mootness as a sham to deprive the court of jurisdiction. When a challenged article, statute, or ordinance is amended or repealed to cure any alleged constitutional defects, a reviewing court should consider two exceptions to the mootness doctrine to determine whether they should dismiss the case as moot. First, the court should consider whether

> the defendant's voluntary cessation of the alleged violation has mooted the case because the legislative body has eliminated the challenged provisions. Second, the court should consider the nature of the case and determine whether the curative changes leave unresolved collateral consequences. 720 So. 2d at 1194.

In Cat's Meow, Inc., the Louisiana Supreme Court had before it an issue concerning the constitutionally of certain amusement tax ordinances. After the petitioner challenged the constitutionally of the ordinances, the ordinances were repealed and revised by the City of New Orleans, purportedly taking away the unconstitutional aspect of the ordinances. The Supreme Court then ordered the parties to file supplemental briefs to the court on the issue of mootness. The court stated:

The court stated the general rule on mootness as follows:

> Before we address the constitutionality of the City's amusement tax, this Court, as a threshold issue, must determine whether the case presents a justiciable controversy or whether the recently amended ordinances rendered this case moot. The jurisprudence of this Court is well settled that courts will not decide abstract, hypothetical or moot controversies, or render advisory opinions with respect to such controversies. In order to avoid deciding abstract, hypothetical or moot questions,

> courts require cases submitted for adjudication to be justiciable, ripe for decision, and not brought prematurely. St. Charles Parish Sch. Bd. Vs. GAF Corp., 512 So.2d at 1165.?

The court further recognized that:

> Thus, it is not enough that the requirements of justiciability are satisfied when the suit is initially filed: the requirements must remain throughout the course of litigation up to the moment of final disposition.

The Louisiana Supreme Court then analyzed the situation under the exceptions to the mootness rule. Under the voluntary cessation exception, the court recognized that although an issue may be moot because a defendant "voluntarily stops allegedly wrongful conduct", that change in itself will not make a case moot because the defendant would be free to return to the unconstitutional conduct. The Supreme Court then recognized that the defendant has the burden to prove to the court that there is "no reasonable expectation that the alleged violation will recur." (Citations omitted.) In the case at bar, the unconstitutional provisions of the Louisiana Civil Code, Code of Civil Procedure and Title 9 of the Louisiana Revised Statutes were not amended

prior to the trial court's decision on the constitutionality of the statutes. Therefore, in this case, it is even a more egregious situation than in Cat's Meow, Inc. Defendant in this case, The State of Louisiana, is totally free to discriminate against females based on the statute cited above. There has been no change in the conduct of the State of Louisiana, the statutes are still on the books. To say that the violation of the constitutional rights of females will not recur is simply absurd.

There exists today statutes in the State of Louisiana, that are blatantly in violation of the constitution of the United States of America and the State of Louisiana. The Legislature of the State of Louisiana has not repealed these statutes and that State of Louisiana can deprive females of their dignity under the Louisiana law as long as the statutes remain on the books. Therefore, under the voluntary cessation exception, there is a reasonable expectation that the violation of constitutional rights will recur and therefore, this issue, although it **MAY** be moot, this court must render a decision in this case.

If this issue can be mooted simply by a trial court judge giving permission to a female to file a lawsuit while recognizing that this female has no right under Louisiana law to file the lawsuit in clear violation of the constitutions, then this issue will never be resolved. The defendant in this case has not voluntarily ceased the unconstitutional conduct by repealing the unconstitutional statutes.

The second exception to the mootness doctrine as set forth in Cat's Meow, Inc., supra, is the so called "collateral consequences exception." Id. In analyzing a challenge under this exception, the court looks to the "nature of the relief sought by the parties' Id. in determining the issue before it is moot. The court recognized that although the primary subject of a dispute may have become moot because a change in the law, if there are "collateral consequences" to one of the parties, the issue will survive a challenge for mootness. The court stated subsequently that "the collateral consequences of the case or controversy give a party a concrete interest in the outcome of the litigation and insure that the appeal

is not moot." 720 So.2d at 1197. Although the Court recognized that the most obvious reason for denying mootness under this exception was where money damages or other monetary relief was claimed by the petitioner. Although in the Petition for Declaratory Judgment filed by plaintiff-appellant did not request monetary damages, the plaintiff-appellant sought something much greater than money damages, her very dignity under the law, her dignity to represent her own flesh and blood. The State of Louisiana has denied her that right, simply because she is a female. The State of Louisiana has required her to jump through several hoops by first groveling at the feet of the male to who she is married, asking him whether or not he was going to fulfill his legally sanctioned status under Louisiana law and file a lawsuit on behalf of the couple's minor child, or whether she had **permission** to file the suit. ONLY THEN could plaintiff-appellant, under current Louisiana law, request **permission** from the trial court to file the lawsuit.

Plaintiff-appellant, ***MELISSA LEBLANC***, today has suffered the indignity and is still suffering from that indignity

because the trial court, relying on an unconstitutional provision of Louisiana law, did not recognize that she was on an equal plane with males, but the trial court recognized that ***MELISSA LEBLANC***, as a female, was on a lesser plane than the male and therefore had to grant permission for ***MELISSA LEBLANC*** to file a lawsuit, rather than let ***MELISSA LEBLANC*** file the lawsuit in her own right. To say that this issue is moot is to trample under feet the constitutional protections for which this great country is founded.

Today this court is faced with the simple issue of whether this appeal should be dismissed because plaintiff-appellant, ***MELISSA LEBLANC***, was granted permission to file a lawsuit on behalf of her minor child. The issue of ***MELISSA LEBLANC***'s dignity is still before this court. She has not been able to file a lawsuit in her own right, but was manipulated by unconstitutional provisions of Louisiana law and is before this court, not on her own right, but only after a trial court has granted her permission over the preference of her male husband, and only after a trial

court, relying on unconstitutional provisions of Louisiana law allowed her to file this lawsuit.

To say our government can deny a female the right to represent her minor child because she is a female is contemptible of the rights that is the foundation of our nation. To say that a court can just declare the issue moot because a trial court gives permission for her to maintain the suit is clearly in error.

Further, the laws at issue are clearly unconstitutional. (Appendix "J") It is imperative that this Court declare the statutes unconstitutional to protect further discrimination against females.

For this reason, plaintiff-appellant, **MELISSA LEBLANC**, respectfully submits to this court that the issue concerning the constitutionality of the cited statutes is not moot. In the alternative, if this court would find that it is moot, the exceptions to the mootness rule would apply to prevent the defendant from further engaging in this unconstitutional conduct.

Respectfully submitted,
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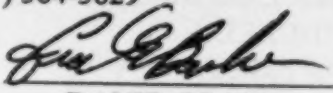
BY: 

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APPENDIX "A"

MELISSA LEBLANC, INDIVIDUALLY, AND AS PARENT & NATURAL TUTOR OF THE MINOR CHILD, ASHLEY L. LEBLANC	15TH JUDICIAL DISTRICT COURT
VERSUS NO. _____	PARISH OF VERMILION
MAX A. MIGUEZ AND ALLSTATE INSURANCE COMPANY	STATE OF LOUISIANA

PETITION FOR DAMAGES

This the petition of MELISSA LEBLANC, Individually, and as Parent and Natural Tutor of the minor child, Ashley L. LeBlanc, of legal age and domiciled in Iberia Parish, Louisiana; who, through undersigned counsel, with respect, represents that:

1.

Made defendants herein are MAX A. MIGUEZ, of legal age and domiciled in Vermilion Parish, Louisiana; and ALLSTATE INSURANCE COMPANY, a foreign insurance company, authorized to do and doing business in the State of

Louisiana.

2.

Defendants are justly and truly indebted unto petitioner in the full and true sum of damages in an amount to be proven at trial for the following reasons to-wit:

3.

On or about November 7, 1999, petitioner, MELISSA LEBLANC and her daughter, ASHLEY L. LEBLANC, were riding as guest passengers in a vehicle driven and owned by Tony LeBlanc, being a 1986 Chevrolet truck. Petitioners were traveling east on Louisiana Highway 14 in Vermilion Parish, Louisiana, near the intersection of North Road where Highway 14 turns from a two-lane highway to a four-lane divided highway.

4.

Defendant, MAX A. MIGUEZ, driving a 1979 Ford truck was following directly behind the petitioner' vehicle, when petitioners' vehicle slowed because of traffic in front and said defendant, MAX A. MIGUEZ, failed to slow his vehicle crashing

into the rear of the pick-up truck in which petitioner were riding, causing the injuries and damages to petitioners as set forth hereafter.

5.

The aforedescribed accident was not caused or contributed by any actions of your petitioners, but rather was the sole and exclusive negligence of defendant, MAX A. MIGUEZ, in the following respects:

a. Careless operation of a vehicle
b. Failure to maintain control of his vehicle
c. Following too closely; and
d. Other acts of negligence to be shown at trial of this matter

6.

As a result of the aforedescribed accident, your petitioner, MELISSA LEBLANC, has sustained the following damages, to-wit:

a. Past, present and future medical expenses
b. Past, present and future pain and suffering, mental anguish and distress;
c. Loss Wages, past, present and future; and
d. Other damages to be shown at trial

7.

As a result of the aforedescribed accident, the minor child, ASHLEY L. LEBLANC, has sustained the following damages, to-wit:

a. Past, present and future medical expenses

b. Past, present and future pain and suffering, mental anguish and distress;

c. Other damages to be shown at trial

8.

At the time of the aforedescribed accident, defendant ALLSTATE INSURANCE COMPANY, had in force and effect a policy of insurance insuring the vehicle driven by MAX A. MIGUEZ, and the said MAX A. MIGUEZ, from a claim for damages as is filed herein by your petitioner.

9.

Because of her poverty and want of means, petitioner, MELISSA LEBLANC, Individually or on behalf of her minor child, ASHLEY L. LEBLANC, is unable to advance court costs or

pay as they accrue and, therefore, desires to file and prosecute this matter in forma pauperis in accordance with Louisiana Code of Civil Procedure.

WHEREFORE, PETITIONER PRAYS that after due proceedings had there be judgment rendered in favor of petitioner, MELISSA LEBLANC, Individually, and as Parent and Natural Tutor of the minor child, ASHLEY L. LEBLANC, and against defendants, MAX A MIGUEZ and ALLSTATE INSURANCE COMPANY, jointly, severally and in solido, in the full and true sum of damages to be proven at a trial of this matter plus legal interest from date of judicial demand, until paid, and for all costs of these proceedings.

PETITIONER FURTHER PRAYS that she be allowed to file and prosecute this action in forma pauperis in accordance with Louisiana Code of Civil Procedure.

PETITIONER FURTHER PRAYS that defendants be cast for all costs of court.

PETITIONER FURTHER PRAYS for all general and

equitable relief under law.

Respectfully submitted,
DAVID GRONER, P.L.C.
724 SOUTH LEWIS STREET
POST OFFICE BOX 9207
NEW IBERIA, LA 70562-9207
(318) 364-3629
BY: /s/ David W. Groner
DAVID W. GRONER
BAR ROLL NO. 6349

VERMILION PARISH, LA.
FILED THIS DAY
DEC 15 11:40 AM, 99
/s/ Sam H. Theriot
CLERK OF COURT

APPENDIX "B"

15TH JUDICIAL DISTRICT COURT
FOR THE PARISH OF VERMILION
STATE OF LOUISIANA

NO. 99-73685 DIVISION "L"

MELISSA LEBLANC, INDIVIDUALLY AND
AS PARENT & NATURAL TUTOR OF THE
MINOR CHILD, ASHLEY L. LEBLANC

VERSUS

MAX A. MIGUEZ AND ALLSTATE INSURANCE COMPANY

FILED: DY. CLK.

DILATORY EXCEPTION OF LACK OF PROCEDURAL CAPACITY

NOW INTO COURT, through undersigned counsel, comes defendants, Max Miguez and Allstate Insurance Company, appearing herein solely for the purpose of this exception and excepts to the plaintiff's Petition on the following grounds:

Plaintiff herein, Melissa LeBlanc, individually and as parent and natural tutor of the minor child, Ashley L. LeBlanc, is bringing this suit on behalf of her minor, Ashley L. LeBlanc.

If the plaintiff, Melissa LeBlanc, is presently legally married to the father of Ashley L. LeBlanc, she has no procedural capacity to institute this suit on behalf of her minor child, since according to Louisiana Code of Civil Procedure Article 683, the father as the administrator of the estate of his minor child, is the proper plaintiff to bring a lawsuit on behalf of his minor child when the parents are legally married.

In the event that the present plaintiff, Melissa LeBlanc, is no longer married to the father of Ashley L. LeBlanc, she still does not have the procedural capacity to institute this suit on behalf of Ashley L. LeBlanc since she has not alleged or proved that she is duly qualified to act as the natural tutor of her minor as required in accordance with Louisiana Code of Civil Procedure.

WHEREFORE exceptor prays that this exception be maintained and that, accordingly, defendants, Max Miguez and Allstate Insurance Company, be relieved from answering said Petition until such time as the proper party plaintiff to bring a suit on behalf of the above mentioned minor child be named as a

plaintiff in this matter, and in the event of noncompliance with this Order within the time allowed by the Court, that the suit be dismissed at plaintiff's cost.

Respectfully Submitted:
Law Offices of Richard E. Britson, Jr.
/s/ Joseph H. Garbarino
Joseph H. Garbarino (#20551)
201 Rue Iberville, Suite 500
Lafayette, LA 70508
(337) 234-1757
Attorney for Max Miguez and
Allstate Insurance Company

ORDER

Let the foregoing Dilatory Exception of lack of Procedural Capacity be set for hearing on 8 day of March, 2000, at 9:00 o'clock Before Judge Castle, 2nd fixing

Jan. 5, 2000
/s/ Durwood Conque
JUDGE

PLEASE SERVE:

Melissa LeBlanc, as Parent and Natural
Tutor of the minor child, Ashley L. LeBlanc,
Through their attorney of record,
David Groner

724 S. Lewis Street
New Iberia, LA

CERTIFICATE

I HEREBY CERTIFY that a copy of the above and foregoing pleading has been mailed, postage prepaid, to all counsel of record on this 4th day of Jan., 2000.

/s/ Joseph H. Garbarino
Joseph H. Garbarino

VERMILION PARISH, LA.
FILED THIS DAY
JAN 5 11:40 AM, 00
/s/ Sam H. Theriot
CLERK OF COURT

APPENDIX "C"

MELISSA LEBLANC, ET AL	*	15TH JUDICIAL DISTRICT COURT
VERSUS DOCKET NO. 73685-L	*	PARISH OF VERMILION
MAX A. MIGUEZ, ET AL	*	STATE OF LOUISIANA

PETITION FOR DECLARATORY JUDGMENT

This, the petition of ***MELISSA LEBLANC, individually and as parent and natural tutrix of the minor child, ASHLEY L. LEBLANC,*** who respectfully represents that:

1.

MELISSA LEBLANC is the natural mother of the minor child, ***ASHLEY L. LEBLANC.*** The natural father of the child is her husband, ***TONY C. LEBLANC.*** Presently, ***MELISSA LEBLANC*** and ***TONY C. LEBLANC*** are husband and wife. ***MELISSA LEBLANC*** and ***TONY C. LEBLANC*** are physically separated, not living together as husband and wife.

2.

MELISSA LEBLANC's minor child was injured in an

automobile accident and on behalf of her minor child, she filed a Petition for Damages against the persons responsible for the injuries to her minor child.

3.

The defendants in this suit, ***MAX A. MIGUEZ and ALLSTATE INSURANCE COMPANY,*** filed a Dilatory Exception of Lack of Procedural Capacity alleging, inter alia, that under Louisiana law, since ***MELISSA LEBLANC,*** Ais presently legally married to the father of ***ASHLEY L. LEBLANC,*** she has no procedural capacity to institute this suit on behalf of her minor child ..."

4.

The defendants cite Louisiana Code of Civil Procedure Article 683, which on its face only allows the father of a minor child to sue to enforce rights of unemancipated minors when the parents are not divorced or judicially separated.

5.

Certain laws of the State of Louisiana grant the father of a

minor child the exclusive right to enforce rights of a minor to the exclusion of the mother of the child in certain circumstances, to wit:

La. C.C.P. Art. 683:

A. An unemancipated minor does not have the procedural capacity to sue.

B. Except as otherwise provided in Article 4431, the tutor appointed by a court of this state is the proper plaintiff to sue to enforce a right of an unemancipated minor, when one or both of the parents are dead, the parents are divorced or judicially separated, or the minor is an illegitimate child.

C. The father, as administrator of the estate of his minor child, is the proper plaintiff to sue to enforce a right of an unemancipated minor who is the legitimate issue of living parents who are not divorced or judicially separated. The mother, as the administratrix of the estate of her minor child, is the proper plaintiff in such an action, when the father is mentally incompetent, committed, interdicted, imprisoned, or an absentee. Moreover, with permission of the judge, the mother may represent the minor whenever the father fails or refuses to do so; and in any event she may represent the minor under the conditions of the laws on the voluntary management of another's affairs.

D. Notwithstanding the provisions of Paragraph A, B, or C, an attorney appointed by the court having jurisdiction over an unemancipated minor who is in the legal custody of the Department of Social Services is the proper plaintiff to sue to enforce a right of an unemancipated minor. Upon application of the tutor or parent who would otherwise be the proper plaintiff to sue pursuant to

Paragraph B or C, the court shall appoint or substitute as the proper plaintiff the best qualified among the tutor, parent, or appointed attorney.

Art. 732. Unemancipated minor:

A. An unemancipated minor has no procedural capacity to be sued.

B. Except as otherwise provided in Article 4431, the tutor appointed by a court of this state is the proper defendant in an action to enforce an obligation against an unemancipated minor, when one or both of the parents are dead, the parents are divorced or judicially separated, or the minor is an illegitimate child. If such a minor has no tutor, the action may be brought against the minor, but the court shall appoint an attorney at law to represent him.

C. The father, as administrator of the estate of his minor child, is the proper defendant in an action to enforce an obligation against an unemancipated minor who is the legitimate issue of living parents who are not divorced or judicially separated. The mother, as the administratrix of the estate of her minor child, is the proper defendant in such an action, when the father is mentally incompetent, committed, interdicted, imprisoned, or an absentee. Moreover, with permission of the judge, the mother may represent the minor whenever the father fails or refuses to do so.

D. Notwithstanding the provisions of Paragraph A, B, or C, an attorney appointed by the court having jurisdiction over an unemancipated minor who is in the legal custody of the Department of Social Services is the proper defendant in an action to enforce an obligation against an unemancipated minor. Upon application of the tutor or parent who would otherwise be the proper defendant to be sued pursuant to Paragraph B or C, the court shall appoint or substitute as the proper defendant the best qualified among the tutor, parent, or appointed attorney.

Art. 4501. Father as administrator of minor's property:

When both parents are alive and not divorced or judicialiy separated, property belonging to a minor may be sold or mortgaged, a claim of a minor may be compromised, and any other step may be taken affecting his interest, in the same manner and by pursuing the same forms as in case of a minor represented by a tutor, the father occupying the place of and having the powers of a tutor.

Whenever the action of an undertutor would be necessary, an undertutor ad hoc shall be appointed by the court, who shall occupy the place of and have the powers of an undertutor.

Art. 4502. Right of mother to represent minor:

The mother shall have the authority of the father during such time as the father is mentally incompetent, committed, interdicted, imprisoned, or an absentee. Moreover, with permission of the judge, the mother may represent the minor whenever the father fails or refuses to do so; and in any event she may represent the minor under the conditions of the laws on the voluntary management of another's affairs.

Art. 216. Parental authority:

A child remains under the authority of his father and mother until his majority or emancipation.

In case of difference between the parents, the authority of the father prevails.

Art. 221. Parental administration of child's estate:

The father is, during the marriage, administrator of the estate of his minor children and the mother in case of his interdiction or absence

during said interdiction or absence.

He or she shall be accountable both for the property and revenues of the estates the use of which he or she is not entitled to by law and for the property only of the estate the usufruct of which the law gives him or her.

This administration ceases at the time of the majority or emancipation of the children, and also ceases upon judicial separation from bed and board either of the father from the mother or of the mother from the father.

LSA-R.S. 9:195. Provisional tutor upon death of mother:

There shall be appointed for the children a provisional tutor in the manner herein directed, if at the time of the disappearance of the father, the mother should be dead, or if she should die before their attaining the age of majority.

6.

The above-cited laws of the State of Louisiana exist in contravention of the provisions of the Constitution of the United States of America, specifically Amendment 14, which provides in part:

> "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

7.

The above-cited statutes also exist in contravention of the provisions of the Constitution of the State of Louisiana, more specifically, La. Const. art. 1 Section 3, Right to Individual Dignity, which provides:

> "no person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime."

8.

By discriminating based on sex and not allowing the mother of a minor child equal status with the father of the minor child, vis-a-vis the rights of and the authority over a minor child, the laws cited arbitrarily discriminate against ***MELISSA LEBLANC*** because of her sex and deprive her of her right to individual dignity as a female.

9.

For these reasons, the above-cited statutes should be declared unconstitutional and unenforceable and ***MELISSA LEBLANC***

should be granted all the rights, privileges and immunities granted to her by the Constitution of the United States of America and the State of Louisiana and she should be allowed to prosecute the aforementioned action on behalf of her minor child.

WHEREFORE, petitioner prays that the defendants, ***MAX A. MIGUEZ and ALLSTATE INSURANCE COMPANY,*** and the Attorney General of the State of Louisiana be served with a certified copy of this petition and citation and commanded to appear and answer same within the time delays allowed by law and that after due proceedings be had, the statutes cited, La. C.C.P. art. 683, 732, La. C.C. P. art. 4501, 4502, La. C.C. art. 216, La. C.C. art. 221, and LSA-R.S. 9:195, be declared to be contrary to the provisions of the Constitution of the United States of America and the Constitution of the State of Louisiana and be declared unenforceable and that ***MELISSA LEBLANC*** be allowed to prosecute the aforementioned action for damages on behalf of her minor child.

Respectfully Submitted,

DAVID GRONER, P.L.C.

BY: /s/ Frank E. Barber
DAVID GRONER
Bar Roll No. 6349
FRANK E. BARBER
Bar Roll No. 22933
724 South Lewis Street
Post Office Box 9207
New Iberia, LA 70562-9207
337/364-3629
337/367-2438 (FAX)

VERMILION PARISH, LA.
FILED THIS DAY
JAN 20 1:17 PM, 00
/s/ Sam H. Theriot
CLERK OF COURT

SERVICE INFORMATION:

MAX A. MIGUEZ
AND ALLSTATE INSURANCE COMPANY
Through their Attorney of Record,
Mr. Joseph H. Garbarino
Law Office of Richard E. Britson
201 Rue Iberville
Suite 500
Lafayette, LA 70508

RICHARD P. IEYOUB
Attorney General
State of Louisiana
301 Main Street
Sixth Floor
One American Place
Baton Rouge, LA 70801

APPENDIX "D"

MELISSA LEBLANC, ET AL * 15TH JUDICIAL DISTRICT COURT

VERSUS DOCKET NO. 73685-L * PARISH OF VERMILION

MAX A. MIGUEZ, ET AL * STATE OF LOUISIANA

JUDGMENT

This cause came for hearing on March 8, 2000, before the Honorable Marilyn Castle. On the docket was an Exception of Lack of Procedural Capacity filed by defendants, ***ALLSTATE INSURANCE COMPANY and MAX A. MIGUEZ,*** and the trial on the Petition for Declaratory Judgment filed by plaintiff, ***MELISSA LEBLANC, individually and as parent and natural tutrix of the minor child, ASHLEY L. LEBLANC.*** The Court after considering the law, evidence, and the arguments of counsel, ruled as follows:

IT IS ORDERED, ADJUDGED AND DECREED that the Exception of Lack of Procedural Capacity filed by defendants, ***ALLSTATE INSURANCE COMPANY and MAX A. MIGUES,*** is hereby maintained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for Declaratory Judgment filed ***MELISSA LEBLANC, individually and as parent and natural tutrix of the minor child, ASHLEY L. LEBLANC,*** is hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court grants the permission of ***MELISSA LEBLANC*** to maintain and pursue the action set forth in the Petition for Damages filed in this matter on behalf of her minor child, ***ASHLEY LEBLANC.***

RENDERED this 8th day of March, 2000, at Abbeville, Vermilion Parish, Louisiana.

READ AND SIGNED this 28 day of March, 2000, at Vermilion, Parish, Louisiana.

/s/ Marilyn Castle
MARILYN CASTLE
DISTRICT JUDGE

APPROVED AS TO CONTENT AND FORM:

DAVID GRONER, P.L.C.

BY: **/s/ Frank E. Barber**
DAVID GRONER (#6349)
FRANK E. BARBER (#22933)
Attorneys for Plaintiffs

BY: /s/ Joseph H. Garbarino /s/ FB
JOSEPH H. GARBARINO (#20551)
Attorney for Defendants

VERMILION PARISH, LA.
FILED THIS DAY
APR 4 11:07 AM, 00
/s/ Sam H. Theriot
CLERK OF COURT

APPENDIX "E"

MELISSA LEBLANC, ET AL * 15TH JUDICIAL DISTRICT COURT

VERSUS DOCKET NO. 73685-L * PARISH OF VERMILION

MAX A. MIGUEZ, ET AL * STATE OF LOUISIANA

MOTION AND ORDER FOR DEVOLUTIVE APPEAL

The motion of ***MELISSA LEBLANC, ET AL,*** through undersigned counsel, who moves that this Court grant an appeal from the Judgment dated March 8, 2000, and signed March 28, 2000, whereby the Court ordered that an Exception of Lack of Procedural Capacity filed by the defendants, ***ALLSTATE INSURANCE COMPANY and MAX A. MIGUEZ,*** be maintained and dismissing the Petition for Declaratory Judgment filed by petitioner, ***MELISSA LEBLANC, ET AL.***

CERTIFICATE OF SERVICE
The undersigned certifies that a copy of the foregoing has been forwarded to all counsel of record by placing same in the United States Mail, postage prepaid on this 13th day of March, 2000.

Respectfully submitted:
DAVID GRONER, P.L.C.
724 South Lewis Street
P.O. Box 9207
New Iberia, Louisiana
70562-9207
(318) 364-3629

BY: /s/ Frank E. Barber
FRANK E. BARBER

ORDER

Considering the foregoing:

IT IS ORDERED that a Devolutive Appeal be granted to ***MELISSA LEBLANC, ET AL,*** and that the appeal be returnable to the Court of Appeals, Third Circuit, forth-five (45) days following the payment of estimated costs by ***MELISSA LEBLANC, ET AL.***

SIGNED AND RENDERED in Abbeville, Vermilion Parish, Louisiana, this 30th day of March, 2000.

/s/ Marilyn Castle
MARILYN CASTLE
DISTRICT JUDGE

APPENDIX "F"

00-632
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

MELISSA LEBLANC, ET. AL.
Plaintiff-Appellant

VERSUS

MAX MIGUEZ & ALLSTATE

Defendant-Appellee

On appeal from the Fifteenth Judicial District Court for the Parish of Vermilion, bearing Docket Number 73685, the Honorable Marilyn Castle, District Judge presiding.

ORDER

The appellant, Melissa Leblanc is hereby ordered to show cause, by Brief only, on or before May 24, 2000 why the above captioned appeal should not be dismissed as moot, since the appellant has been granted permission to maintain and pursue the action of her minor child pursuant to La. Code Civ.P. Art. 683.

May 8, 2000
Lake Charles, LA
/s/ Kenneth J. deBlanc
KENNETH J. deBLANC, CLERK
For the Court

APPENDIX "G"

Judgment rendered July 12, 2000
Applications for rehearing may be filed within the delays allowed by La. Code Civ.P.art. 2166 or La.Code Crim.P.art. 922.

NOT DESIGNATED FOR PUBLICATION

MELISSA LEBLANC, ET AL * No. 00-632

VERSUS * COURT OF APPEAL

MAX A. MIGUEZ AND * THIRD CIRCUIT

****

APPEAL FROM THE
FIFTEENTH JUDICIAL DISTRICT COURT
PARISH OF VERMILION (No. 73685)
HONORABLE MARILYN CASTLE

****

NED E. DOUCET, JR.
JUDGE

****

(Court composed of Ned E. Doucet, Jr., Henry L. Yelverton, and Ulysses Gene Thibodeaux, Judges)

Frank E. Barber
P.O. Box 9207
New Iberia, LA 70562-9207
COUNSEL FOR PLAINTIFF/APPELLANT
Joseph Garbarino
201 Rue Iberiville #500
Lafayette, LA 70508
COUNSEL FOR DEFENDANT/APPELLEE

APPEAL DISMISSED

Ned E. Doucet, Jr., Chief Judge

This court issued a rule to show cause to the plaintiff/appellant, Melissa Leblanc, to show cause why the above captioned appeal should not be dismissed as moot, since the plaintiff has been granted the permission to maintain and pursue the action for her minor child pursuant to La. Code Civ. P. art. 683. We hereby dismiss.

Melissa Leblanc filed a petition for damages on behalf of her minor child for injuries the minor allegedly received as a result of the actions of the defendant. Melissa Leblanc and the minor's father are married, but physically separated. The defendant, Allstate, filed an exception of lack of procedural capacity alleging that only the minor's father can petition the court on behalf of the minor child relying on La. Code Civ. P. art. 683. In response to the exception, plaintiff/appellant filed a petition for declaratory judgment requesting that the trial court hold unconstitutional certain provisions of Louisiana law which discriminate against

females in favor of males in the maintenance and pursuit of claims on behalf of minors. The trial court maintained the exception dismissing the mother's petition for declaratory judgment, but granted Melissa Leblanc the authority to file suit on behalf of the minor under the provision of La. Code Civ. P. art. 683. From this decision, the plaintiff/appellant appeals. Once the appeal was lodged with the appellate court, this court issued a rule to show cause whey the above captioned appeal should not be dismissed as moot since the trial court granted permission to the defendant/appellant to file suit.

La. Code Civ. P. art. 683 states in pertinent part as follows:

> C. The father, as administrator of the estate of his minor child, is the proper plaintiff to sue to enforce a right of an unemancipated minor who is the legitimate issue of living parents who are not divorced or judicially separated. The mother, as the administratrix of the estate of her minor child,
> is the proper plaintiff in such an action, when the father is mentally incompetent, committed, interdicted, imprisoned, or an absentee. Moreover, with permission of the judge, the mother may represent the minor whenever the father fails or minor under the conditions of the laws on the voluntary management of another's affairs.

In the present case, we find that the mother was granted the relief that she prayed for in the petition in that she was allowed to pursue the claim on behalf of the minor child. We find that once the mother was granted the relief sought, the issue of the unconstitutionality of the statute became moot. In *Cat's Meow, Inc. v. The City of New Orleans*, 98-0601 (La. 10/20/98) 720 So. 2d 1186, stated as follows:

> [2-5] According to Louisiana jurisprudence, an issue is "moot" when a judgment or decree on that issue has been "deprived of practical significance" or "made abstract or purely academic." *Perschall v. State*, 96-0322 (La.7/1/97), 697 So.2d 240; *Louisiana Associated Gen. Contractors, Inc.*, 669 So.2d at 1193; *American Waste & Pollution Control Co.*, 627 So.2d at 162. A case is "moot" when a rendered judgment or decree can serve no useful purpose and give no practical relief or effect. *Robin*, 384 So.2d at 405. If the case is moot, then " 'there is no subject matter on which the judgment of the court can operate.' " *St. Charles Parish Sch. Bd.*, 512 So.2d at 1171 (citing *Ex parte Baez*, 177 U.S. 378, 20 S.Ct. 673, 44 L.Ed. 813 (1900)). That is, jurisdiction, once established, may abate if the case becomes moot.
>
> According to ROTUNDA & NOWAK, TREATISE ON CONSTITUTIONAL LAW, Vol. 1, S 2.13, a case may become moot for several reasons:
>
> > *9 The controversy must normally exist at every stage of the proceeding, including the appellate stages. Thus, a case may become

> moot because the law has changed; because defendant has paid moneys owed and no longer wishes to appeal, notwithstanding plaintiff's desire to obtain a higher court ruling; because allegedly wrongful behavior has passed, been mooted, and could not reasonably be expected to recur; because a party could no longer be affected by a challenged statute; for example, a law regulating rights of minors when the party, through lapse of time, is no longer within the age brackets governed by the statute; or because a party has died.
>
> Thus, it is not enough that the requirements of justiciability are satisfied when the suit is initially filed: the requirements must remain throughout the course of litigation up to the moment of final disposition.

In the present case we find that there is no longer a justiciable controversy since the mother was allowed to pursue the petition for damages on behalf of her minor child. For this reason we decline to exercise jurisdiction and hereby dismiss the appeal.

APPEAL DISMISSED

/s/ UGT

Thibodeaux, J., dissents and would withdraw the Rule to Show Cause for good cause shown and maintain the appeal. See the exceptions to the mootness doctrine discussed in *Cat's Meow, Inc. v. The City of New Orleans*, 98-0601 (La. 10/20/98) 720 So. 2d 1186.

APPENDIX "H"

MELISSA LEBLANC, ET AL	*	COURT OF APPEAL
VERSUS DOCKET NO. 00-632	*	THIRD CIRCUIT
MAX A. MIGUEZ, ET AL	*	STATE OF LOUISIANA

AND

MELISSA LEBLANC, ET AL	*	15TH JUDICIAL DISTRICT COURT
VERSUS DOCKET NO. 73685-L	*	PARISH OF VERMILION
MAX A. MIGUEZ, ET AL	*	STATE OF LOUISIANA

NOTICE OF INTENTION TO APPLY FOR WRIT OF CERTIORARI

TO:Honorable Marilyn Castle
P.O. Box 2717
Lafayette, Louisiana
70502-2717

Mr. Joseph Garbarino, Esq.
201 Rue Iberville, Suite 1400
Lafayette, Louisiana 70508

Honorable Kenneth J. deBlanc
Clerk of Court
Third Circuit Court of Appeals
P.O. Box 16577
Lake Charles, LA 70616

Mr. Richard Ieyoub
State of Louisiana,
Atty. Gen. Office
301 Main St., Sixth Floor
One American Place
Baton Rouge, Louisiana

Plaintiff, Melissa LeBlanc, appearing through undersigned

counsel hereby gives notice of their intention to apply for a writ of certiorari to the Supreme Court, State of Louisiana, regarding the ruling of the Third Circuit, Court of Appeal of July 12, 2000, where the court dismissed the appeal of Melissa LeBlanc as moot.

New Iberia, Louisiana, this 11th day of August, 2000.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been forwarded to all counsel of record by placing same in the United States Mail, postage prepaid on this 11th day of August, 2000.

Respectfully submitted:
DAVID GRONER, P.L.C.
724 South Lewis Street
P.O. Box 9207
New Iberia, Louisiana 70562-9207
(337) 364-3629
BY: /s/ Frank E. Barber
FRANK E. BARBER
BAR ROLL NO. 6349

APPENDIX "I"

The Supreme Court of the State of Louisiana

MELISSA LEBLANC, ET. AL.

VS. NO. 2000-C-2416

MAX MIGUEZ AND ALLSTATE INSURANCE

IN RE: LeBlanc, Melissa; - Plaintiff; Applying for Writ of Certiorari and/or Review, Parish of Vermilion, 15th Judicial District Court Div. L, Nos. 73685-L; to the Court of Appeal, Third Circuit, No. 00-632

November 17, 2000
Denied.

PFC
HTL
JPV
CDT

KIMBALL, J., would grant the writ.
JOHNSON, J., would grant the writ.
KNOLL, J. would grant the writ.

Supreme Court of Louisiana
November 17, 2000

/s/ Katherine A. Fontana
Deputy Clerk of Court
For the Court

APPENDIX "J"

RELEVANT LOUISIANA LAWS

La. C.C.P. Art. 683:

A. An unemancipated minor does not have the procedural capacity to sue.

B. Except as otherwise provided in Article 4431, the tutor appointed by a court of this state is the proper plaintiff to sue to enforce a right of an unemancipated minor, when one or both of the parents are dead, the parents are divorced or judicially separated, or the minor is an illegitimate child.

C. The father, as administrator of the estate of his minor child, is the proper plaintiff to sue to enforce a right of an unemancipated minor who is the legitimate issue of living parents who are not divorced or judicially separated. The mother, as the administratrix of the estate of her minor child, is the proper plaintiff in such an action, when the father is mentally incompetent, committed, interdicted, imprisoned, or an absentee. Moreover, with permission of the judge, the mother may represent the minor whenever the father fails or refuses to do so; and in any event she may represent the minor under the conditions of the laws on the voluntary management of another's affairs.

D. Notwithstanding the provisions of Paragraph A, B, or C, an attorney appointed by the court having jurisdiction over an unemancipated minor who is in the legal custody of the Department of Social Services is the proper plaintiff to sue to enforce a right of an unemancipated minor. Upon application of the tutor or parent who would otherwise be the proper plaintiff to sue pursuant to Paragraph B or C, the court shall

appoint or substitute as the proper plaintiff the best qualified among the tutor, parent, or appointed attorney.

Art. 732. Unemancipated minor:

A. An unemancipated minor has no procedural capacity to be sued.

B. Except as otherwise provided in Article 4431, the tutor appointed by a court of this state is the proper defendant in an action to enforce an obligation against an unemancipated minor, when one or both of the parents are dead, the parents are divorced or judicially separated, or the minor is an illegitimate child. If such a minor has no tutor, the action may be brought against the minor, but the court shall appoint an attorney at law to represent him.

C. The father, as administrator of the estate of his minor child, is the proper defendant in an action to enforce an obligation against an unemancipated minor who is the legitimate issue of living parents who are not divorced or judicially separated. The mother, as the administratrix of the estate of her minor child, is the proper defendant in such an action, when the father is mentally incompetent, committed, interdicted, imprisoned, or an absentee. Moreover, with permission of the judge, the mother may represent the minor whenever the father fails or refuses to do so.

D. Notwithstanding the provisions of Paragraph A, B, or C, an attorney appointed by the court having jurisdiction over an unemancipated minor who is in the legal custody of the Department of Social Services is the proper defendant in an action to enforce an obligation against an unemancipated minor. Upon application of the tutor or parent who would

otherwise be the proper defendant to be sued pursuant to Paragraph B or C, the court shall appoint or substitute as the proper defendant the best qualified among the tutor, parent, or appointed attorney.

Art. 4501. Father as administrator of minor's property:

When both parents are alive and not divorced or judicially separated, property belonging to a minor may be sold or mortgaged, a claim of a minor may be compromised, and any other step may be taken affecting his interest, in the same manner and by pursuing the same forms as in case of a minor represented by a tutor, the father occupying the place of and having the powers of a tutor.

Whenever the action of an undertutor would be necessary, an undertutor ad hoc shall be appointed by the court, who shall occupy the place of and have the powers of an undertutor.

Art. 4502. Right of mother to represent minor:

The mother shall have the authority of the father during such time as the father is mentally incompetent, committed, interdicted, imprisoned, or an absentee. Moreover, with permission of the judge, the mother may represent the minor whenever the father fails or refuses to do so; and in any event she may represent the minor under the conditions of the laws on the voluntary management of another's affairs.

Art. 216. Parental authority:

A child remains under the authority of his father and mother until his majority or emancipation.

In case of difference between the parents, the authority of the

father prevails.

Art. 221. Parental administration of child's estate:

The father is, during the marriage, administrator of the estate of his minor children and the mother in case of his interdiction or absence during said interdiction or absence.

He or she shall be accountable both for the property and revenues of the estates the use of which he or she is not entitled to by law and for the property only of the estate the usufruct of which the law gives him or her.

This administration ceases at the time of the majority or emancipation of the children, and also ceases upon judicial separation from bed and board either of the father from the mother or of the mother from the father.

LSA-R.S. 9:195. Provisional tutor upon death of mother:

There shall be appointed for the children a provisional tutor in the manner herein directed, if at the time of the disappearance of the father, the mother should be dead, or if she should die before their attaining the age of majority.